

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Amendment of Section 73.3555(e) of the) MB Docket No. 17-318
Commission’s Rules, National Television)
Multiple Ownership Rule)
)

COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION

I. INTRODUCTION

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.² The Notice requests comment on, among other things, the impact that modifying the existing television ownership cap would have on small entities.³ The Commission also seeks comment on whether modifying the ownership cap would have an impact on broadcasters’ and MVPDs’ negotiations governing the terms under which broadcasters’ programming will be delivered by MVPDs to their subscribers.⁴ NTCA appreciates the Commission’s consideration of how any change in

¹ NTCA represents nearly 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA’s service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers. Approximately 75 percent serve as multichannel video programming distributors (“MVPDs”) using a variety of technologies in sparsely populated, high-cost rural markets.

² *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Ownership Rule*, MB Docket No. 17-318, Notice of Proposed Rulemaking, FCC 17-169 (rel. Dec. 18, 2017) (“Notice”).

³ Notice at ¶ 10.

⁴ Notice at ¶ 17.

television broadcasters' ownership cap may affect small MVPDs. Given the significant negative impact relaxing the television multiple ownership rules would have on public safety, broadband deployment in rural areas, and small, rural MVPDs' already-hindered ability to negotiate retransmission agreements, NTCA opposes any plan to increase the existing television broadcasters' ownership cap.

II. INCREASING THE OWNERSHIP CAP WOULD BE SEVERELY DETRIMENTAL TO SMALL MVPDS' ABILITY TO NEGOTIATE RETRANSMISSION AGREEMENTS

MVPDs, and their subscribers, have already endured significant increases in retransmission fees due largely to the increased concentration of broadcast stations.⁵ Additionally, a retransmission survey conducted by NTCA in 2017 revealed that small MVPD providers have significantly greater difficulty negotiating a retransmission consent agreement with a company that controls multiple broadcast stations than with a company that controls a single station.⁶ Even large companies such as Cox Communications and DISH Network feared NexStar's acquisition of Media General "would result in an imbalance in bargaining leverage during retransmission consent negotiations and a concomitant threat of blackouts and higher

⁵ "SNL Kagan estimates that MVPDs paid \$46.28 a month to acquire programming for each subscriber in 2015, up from \$42.53 in 2014. ... MVPDs have raised the prices of video packages 3 to 4 percent annually since 2004, but ... price increases have fallen behind programming costs, which for 7.1 percent in 2013, 6.8 percent in 2014, and 8.1 percent in 2015." *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report*, MB Docket 16-247, rel'd Jan. 17, 2017, ¶ 48.

⁶ Surveys were sent via electronic mail to 593 NTCA members in July 2017. One hundred and fourteen unique responses were received, representing a 19% response rate.

retransmission consent fees, to the detriment of their organizations, consumers, and the public interest.”⁷

As the Department of Justice argued in *U.S. v. AT&T*, “[p]rogrammers’ arms-length negotiations with video distributors involve a give and take based on the relative bargaining leverage of the parties, which is informed by the options available to each party in the event a deal is not reached.”⁸ Clearly, when it comes to small, rural MVPDs “negotiating” with broadcast groups that can reach up to 39 percent of all television households in the U.S., it is not hard to predict which side has more bargaining power.⁹ An MVPD in central Arkansas, for example, notified the Media Bureau last Fall that during recent “negotiations” with a broadcaster, the broadcaster threatened to substantially increase the price of programming if the MVPD did not accept the initial offer within 15 days.¹⁰

Broadcasters leverage their size and customers’ desire for the programming they offer to force small MVPDs to either accept the programming on whatever terms the broadcaster specifies or be unable to carry a popular – or maybe even essential - network on their system. If a popular or essential network is “blacked out” on an MVPD’s system, subscribers will often discontinue their service and look elsewhere for the desired programming.¹¹ Rural MVPDs do

⁷ *Application of License Subsidiaries of Media General, Inc., from Shareholders of Media General, Inc. to Nexstar Media Group, Inc.*, MB Docket No. 16-57, Memorandum Opinion and Order, 32 FCC Rcd 183 at ¶34 (2017).

⁸ *U.S. v. AT&T Inc. et al*, Complaint, U.S. District Court for the District of Columbia, Case 1:17-cv-02511, filed Nov. 20, 2017, ¶13.

⁹ 47 C.F.R. § 73.3555(e).

¹⁰ *See Ex Parte* Letter from Bill Durdach, Director of Gov’t Affairs, WTA – Advocates for Rural Broadband, to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 17-214 (filed Oct. 27, 2017).

¹¹ *See U.S. v. AT&T* at ¶¶ 33-34.

not have enough subscribers to be able to absorb double digit increases in programming fees every three years, and some subscribers will choose to discontinue their service if the cost exceeds what they are willing or able to pay. As the cost of programming increases and the number of subscribers decreases, a number of small, rural MVPDs can no longer afford to provide the service. NTCA's 2015 Video Competition Survey, for instance, revealed that 12% of respondents had ceased offering video service in a market where they previously provided service.¹² Maintaining the current ownership limits will not harm broadcasters while increasing the limits will almost certainly cause significant harm to small, rural MVPDs and the communities in which they operate. Consequently, the Commission should not give broadcasters' increased leverage for negotiating retransmission agreements by increasing broadcasters' ownership cap.

III. RESIDENTS IN RURAL COMMUNITIES RELY ON LOCAL TELEVISION BROADCASTS FOR PUBLIC SAFETY

Even in the current age of social media and multiple video outlets, the majority of people turn to their local television broadcast station for entertainment, local news, weather and sports.¹³ Yet, an NTCA survey found that for nearly one quarter of NTCA members, ninety percent (90%)

¹² NTCA – The Rural Broadband Association and INCOMPAS' 2015 Video Competition Survey, https://www.ntca.org/sites/default/files/documents/2018-01/NTCA_2015VideoCompetitionSurvey.pdf (last visited March 11, 2018).

¹³ Some MVPDs that are located near the border of two states are licensed by the Commission to a Designated Marketing Area ("DMA") that includes a bordering state's broadcast stations rather than their local community's broadcast stations. MVPDs in this situation must pay extra to carry the local community's broadcast stations – in addition to paying huge fees to carry the DMA's stations - because their subscribers need and want local news, weather and sports, not that of the large metropolitan area 60 miles away in another state.

or more of customers cannot receive an over-the-air television broadcast signal.¹⁴ Consequently, a significant number of customers in rural areas rely on their local MVPD to view the local broadcast station. Customers especially rely on being able to view important weather and safety alerts via their local MVPDs during severe weather because it is often the only source of information.¹⁵ Satellite tv services often cannot deliver signals to homes during severe winds such as tornadoes and hurricanes, and satellite service is not consistently available in many of the mountainous and heavily treed areas served by NTCA members. In order to serve their communities, small MVPDs therefore have little choice but to pay any retransmission fee required by broadcasters. Failure to do so may very well result in a “blackout,” or a broadcaster’s refusal to allow an MVPD to retransmit the local broadcast channel.¹⁶

Small, rural MVPDs’ ability to ensure their customers have the programming they need during severe weather and the ability to watch their favorite shows becomes increasingly challenging the larger the broadcaster. Lacking scope and scale, rural MVPDs generally pay more per subscriber for programming than their larger counterparts. Furthermore, rural MVPDs have found that to provide customers with access to the 10 most requested channels, it is

¹⁴ NTCA – The Rural Broadband Association and INCOMPAS 2015 Video Competition Survey (2015 Video Competition Survey), https://www.ntca.org/sites/default/files/documents/2018-01/NTCA_2015VideoCompetitionSurvey.pdf (last visited March 11, 2018).

¹⁵ See, e.g., *Local TV News was the Most Preferred Choice for Floridians Bracing for Irma*, <https://www.tvb.org/Default.aspx?TabID=2114> (last visited March 6, 2018) (A survey of 1,193 respondents found that 85% of respondents used local television news for Hurricane Irma information.). See also, Cynthia Rosenzweig *et al*, *Increasing resiliency to extreme weather*, Nov. 2017 <https://climate.nasa.gov/news/2648/increasing-resiliency-to-extreme-weather/> (last visited March 8, 2018) (hurricanes and coastal flooding “are predicted to increase in the future as our climate changes....”)

¹⁶ See, e.g., Broadcasters Shatter TV Blackout Record in 2017, <http://www.americantelevisionalliance.org/broadcasters-shatter-tv-blackout-record-in-2017/> (last visited March 8, 2018) (Broadcasters took down signals from cable and satellite customers 213 times in 2017 – a 107 percent increase over 2016.).

necessary to pay for and distribute dozens of additional programming channels. While larger MVPDs can persuade programmers to allow them to offer less expensive, and therefore less expensive, service packages to customers, rural MVPDs continue to be forced to pay for much larger groups of channels due to the parties' uneven bargaining power. The Commission itself recognized this problem over 10 years ago, yet the practice continues.¹⁷

NTCA urges the Commission to ensure broadcasters adhere to their obligation to operate in the "public interest, convenience and necessity."¹⁸ As the Commission has recognized, weather reports are one of the "major elements usually necessary to meet the public interest."¹⁹ If broadcasters already use their size to force MVPDs to choose between rapidly escalating program fees or not carrying programming their customers need to remain safe during emergencies, the Commission should not take any action that would allow the broadcasters to become even larger and use their size to operate contrary to their public interest obligation.

¹⁷ See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition*, MB Docket NO. 07-29, *Review of the Commission's Program Access Rules and Examination of Program Tying Arrangements*, MB Docket No. 07-198, Report and Order and Notice of Proposed Rulemaking, 22 FCC Rcd 17791, 17862-17863, ¶ 120 (2007) ("[W]e note that small cable operators and MVPDs are particularly vulnerable to such tying arrangements because they do not have leverage in negotiations for programming due to their smaller subscriber bases.")

¹⁸ 47 U.S.C. § 307(a).

¹⁹ See, e.g., *Network Programming Inquiry, Report and Statement of Policy*, 25 Fed. Reg. 7291, 7295 (1960).

IV. RETAINING THE CURRENT OWNERSHIP CAP IS ESSENTIAL TO CONTINUED DEPLOYMENT AND ADOPTION OF BROADBAND SERVICES IN RURAL COMMUNITIES

Customers often have incentives to subscribe to both video and broadband services when they are offered as a bundle of services for a discount. Consequently, factors that impede the provision of affordable video service adversely affect broadband deployment and adoption as well.²⁰ As the Commission has recognized, “fixed and mobile broadband services provide Americans, especially those in rural and remote areas of the country, access to numerous employment, education, entertainment and health care opportunities.”²¹

Broadband deployment in rural areas also benefits the U.S. economy as a whole. A recent survey of more than 1,200 randomly selected Internet users found “the estimated value of rural online transactions is nearly \$1.4 trillion - or 7% of the U.S. [gross domestic product].”²² Additionally, broadband connections in rural communities bring much needed revenue to those communities, which would not be possible without such a connection. For instance, a scenic inn in rural New York had no cell phone service, relying instead on a satellite Internet connection, which was used by both customers and the inn. The lack of cell phone service prevented the inn from attracting guests for weddings or retreats. In August 2016, Margaretville Telephone Company installed broadband facilities at the inn, allowing the inn to have its most successful

²⁰ See, e.g., NTCA Comments, *Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 17-214, filed Oct. 10, 2017 at p. 4.

²¹ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, 2018 Broadband Deployment Report, rel'd Feb. 2, 2018 at ¶ 1.

²² *A Cyber Economy: The Transactional Value of the Internet in Rural America*, White Paper, First Quarter 2018, p. 2, https://www.frs.org/sites/default/files/documents/2018-03/A-Cyber-Economy_The-Transactional-Value-of-the-Internet-in-Rural-America.pdf (last visited March 11, 2018).

year in its 120-year history following steady online bookings for weddings and retreats and guests' ability to have Internet and cell phone access while staying at the inn.²³

Increasing the broadcast television ownership cap has the potential to drive up the cost of video service which would unnecessarily put essential broadband deployment and adoption in rural areas at risk while also hurting the U.S. economy. Consequently, the Commission should not allow television broadcasters to accumulate even more stations, and create an even more unbalanced position for negotiating retransmission agreements, than already exists.

V. CONCLUSION

Broadcasters already use their size to demand large, and ever increasing, retransmission payments from small, rural MVPDs. Any action that allows broadcasters to wield more power in the skewed negotiations should be avoided. Increasing programming costs have forced some rural MVPDs to discontinue offering video service to the detriment of rural subscribers and communities. If a rural community's local MVPD discontinues operations, the public often has no other source for local broadcasts, putting the public at risk of not obtaining critical information when, for example, extreme weather strikes. Additionally, when consumers are unable to receive needed and desired video programming from their MVPD, or the price is more than they are able or willing to pay, broadband deployment also suffers because many subscribers want one provider for both services. The loss of broadband services in rural areas not only hurts rural communities locally but also the U.S. economy as a whole. Accordingly, the Commission should refrain from adopting rules that are not necessary for broadcasters'

²³ Nick Corasaniti, *In New York, Bringing Broadband to Everyone by 2018*, The New York Times (March 20, 2017), https://www.nytimes.com/2017/03/20/nyregion/new-york-broadband-cuomo-internet.html?_r=0.

continued success and would not only be detrimental to the safety of rural communities but also contrary to the Commission's goal of promoting broadband deployment.

Respectfully submitted,



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